***THE HONOURABLE SRI JUSTICE B.PRAKASH RAO**

AND

***THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+W.P.NO.16337 OF 1995

-

% Dated: 20-09-2006

Between:

B. Dhanamjaya

… Petitioners

and

$ 1. The Executive Officer,
Tirumala Tirupati Devasthanam, Tirupati
2. Principal , S.V. Junior College,Tirupati
3. Devasthanam Educational Officer,
Tirumala Tirupati Devasthanam, Tirupti
4. The Govt. of A.P., Rep.by its Prl. Secretary
Finance and Planning Department, Secretariat, Hyd.

… Respondents

! Counsel for petitioners: Sri S.Ajay Kumar

^ Counsel for respondents 1 to 3: Sri S.Venkateshwara Rao

Counsel for the respondent No.4 : G.P. for Finance and Planning

< GIST:

>HEAD NOTE:

?Cases referred:

1. (2005) 8 SCC 328
2. (2004)4 SCC 412
3. (2004)9 SCC 461

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.16337 OF 1995

DATED: 20-09-2006

BETWEEN:

B.Dhanamjaya .. Petitioner

And

The executive Officer, Tirumala
Tirupati Devasthanam and others. .. Respondents

THE HON'BLE SRI JUSTICE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.NO.16337 OF 1995

ORDER: (PER HON'BLE SRI JUSTICE B.PRAKASH RAO)

The petitioner who is an employee of the respondent No.2 viz. the Tirumala Tirupathi Devasthanam, Tirupathi filed this writ petition, *inter alia,* seeking writ of mandamus to declare Rule 26(i) of the Revised Pension Rules of 1980 (hereinafter referred to as Rules) as illegal, arbitrary and with further direction to the respondent No.1 to pay all the retirement benefits treating the letter of resignation as that of voluntary retirement.

2. Respondent No.1 is the Tirumala Tirupathi Devasthanam and respondent No.2 is the College, where the petitioner is working. Respondent No.3 is the Devasthanam Educational Officer of the Tirumala Tirupathi Devasthanam and respondent No.4 is the Government of Andhra Pradesh represented by its Principal Secretary, Finance and Planning Department, which is impleaded subsequently.

3. Heard Sri V. Ajay Kumar, learned counsel for the petitioner, Sri S. Venkateshwara Rao, learned standing counsel for the Tirumala Tirumathi Devasthanam and the learned Government Pleader for Finance and Planning.

4. The brief facts that are necessary for disposal of this writ petition are, the petitioner was initially appointed as attendar in Tirumala Tirupathi Devasthanam on 30.08.1967. The petitioner states that while he was working as attendar, he studied degree

and also acquired post-graduation in M.A. (Politics) in II Class from S.V. University, Tirupati. After acquiring the said qualification, he applied for the post of Junior Lecturer in Civics. Thereafter, he was appointed as such and relieved from the post of attendar. He joined as Lecturer in Civics on 22.01.1974 in S.V. Junior College, Tirupati, which is the respondent No.2 herein. After completion of the probation, he became a permanent lecturer in the said college, which is under the control of Tirumala Tirupathi Devesthanam, Tirupathi. However, the petitioner complains that the administration in the said college where he was working was getting day by day worst and the relations between the lecturers and students was seriously affected vis-à-vis the officers in the administration. There have been several incidents at the instance of the students and they were behaving in a highhanded manner with lecturers and that he further stated that in spite of his repeated complaints that he was attacked by the students in the year 1988, no action was taken. In view of such existing situation, the petitioner states that he applied for leave from 29.10.1988 to 31.05.1989 including the vacation period and the same was sanctioned to that affect i.e. earned leave from 29.10.1988 to 06.01.1988, half pay leave from 07.11.1988 to 31.03.1989 and permission for leave sanction from 01.04.1989 to 20.06.1989 including vacations.

5. He further states that even in his leave letter followed by another letter dated 20.07.1989, he complained about the misbehaviour of the students, yet no action has been taken. Therefore, having regard to such a worse situation, he submitted his resignation letter on 24.01.1990 and the same was accepted with effect there from. Thereafter, the petitioner filed an application to the respondents herein to give all the retiral benefits

i.e. pension and other monetary benefits including gratuity etc. However, the respondents have rejected the same stating that he is not entitled for any such benefits. Therefore, he submitted a letter on 03.12.1990 to convert the said resignation as that of into a voluntary retirement. Again he submitted another application on 06.12.1990 to permit him to withdraw the resignation letter dated 24.01.1990 and further stated that on such withdrawal he was prepared to work. However, the respondents have issued Memo, dated 04.05.1991, stating that they cannot take him back into service, however, suggesting for approaching the board for withdrawal of the resignation letter on a proper application and to treat it as voluntary retirement. Accordingly, he submitted an application on 06.05.1991 for such withdrawal of retirement into that of voluntary retirement. Thereupon, as per the impugned proceedings dated 01.02.1993 the said request was rejected. This was followed by another application for all such benefits and the same was also not being acted upon nor amounts had been paid. According to the petitioner, as per Article 4 of the Civil Services Regulations, Chapter I of Madras Pension Code the claim of a retired employee is regulated by rules in force at the time when the employee offers to resign or retires. Therefore, the rejection of the petitioner's claim both for treating the retirement as that of voluntary one and denying him of such benefits is violative of Article 19(1)(f) of the Constitution of India. Further he states that having about 23 years of service in the institution there is absolutely no justification to deny the same. Therefore, the action on the part of the respondents and trying to place reliance on Rule 26(1) of the aforesaid Rules for rejecting his case is not valid and even the very rule itself is arbitrary and illegal and hence the same is liable to be set aside. Hence, this writ petition

6. Initially in the counter affidavit filed on behalf of the respondents 1 to 3 by the then Executive Officer, it is stated that in regard to the chequered events as to his initial appointment and subsequent services and leave applied for followed by the resignation, were not denied. However, the reasons, which have been shown, according to the petitioner which lead for such resignation or applying for leave was denied. It is stated therein that having regard to the specific provisions as provided under Rule 26(1) of the aforesaid Rules, the petitioner would not be entitled to any such benefits and therefore, all his applications subsequently filed were rightly rejected and hence, question of his withdrawal for the resignation as initially filed also does not arise and the same is not sustainable. It was further pointed out that admittedly the petitioner has been staying away from it with effect from 24.01.1990 and availing leave. His initial request for resignation for the post of Junior Lecturer with effect from 24.01.1990 was duly accepted as per memo dated 02.04.1990 and therefore, the same has become final and subsequently it cannot be treated nor converted as voluntary retirement and hence, it was duly intimated to the petitioner on 01.02.1993. It was also pointed out that in the very resignation letter dated 24.01.1990, the petitioner himself stated that he was very inefficient in professional duties and therefore, the resignation was accepted and subsequent request for conversion into voluntary retirement cannot be accepted. Therefore, the petitioner's claim for all the benefits as sought for by him in the various applications and even in the present writ petition does not arise and he would not be entitled to such benefits. Having regard to the specific provisions as referred to above, it was also pointed out that the petitioner has

got an alternative efficacious remedy of regular appeals before the Tirumala Tirupathi Devasthanam Trust Board and Government and that without exhausting the same, the petitioner approached this Court. Hence, the writ petition is not maintainable.

7. In the counter affidavit filed on behalf of the respondent No.4 in regard to the allegations challenging the validity of the aforesaid Rule 26(i) of the aforesaid rules, it was stated that having regard to the said provisions specifically denying the earlier service and further Rule 43 of the very same rules, there is no provision to convert the resignation into that of a voluntary retirement once it was accepted. Further it was also pointed out that the petitioner did not give any prior notice for voluntary retirement except seeking for resignation. Therefore, his case would not call for in any way near or within the parameters of the aforesaid rules. Thus, as contemplated under Rule 26(1) of the aforesaid rules, the resignation shall entail the forfeiture of the petitioner, therefore, he is not entitled for any pensionary benefits. Further it has also been alleged that even under Rule 30 of the A.P. State and Subordinate Service Rules, the said forfeiture of the past services is contemplated consequent to resignation. Therefore, there is justification for such a denial of pension under the aforesaid Rule 26(1) of the Act. That apart the resignation was unilateral act of the petitioner himself, therefore, it cannot be questioned at later stage. As per Rule 4 of the Tirumala Tirupathi Devasthanam Service Rules, A.P. State & Subordinate Service Rules are applicable to the employees of the Tirumala Triupathi Devasthanam and therefore, both the rules under 26(1) and 30 squarely applies to the situation. Giving the reasons in support of such an incident following the resignation, it is stated that the individual voluntarily tenders such resignation, he automatically

ceases to be the member of that particular service, therefore, he would not be eligible for any benefit since he left the service voluntarily. However, in the case of compulsory retirement, the individual as a measure of penalty will be discharged from the duty treating it as retirement, where he would be getting all pensionary benefits. If the individual as a measure of penalty is dismissed and removed from the service, then he will not get any pensionary benefits in terms of Rule 24 of the A.P. Revised Pension Rules, 1980. Since in this case the petitioner on his own, tendered his resignation and left the institution. Therefore, he would not be entitled to any pension. Except making such bald allegations, no ground has been made out to show as to how the aforesaid rule is on consideration.

8. Having regard to the facts and circumstances and voluntary act the petitioner cannot take any different stand by probating or reprobating the other reasons shown about the hardship and the same cannot constitute any valid ground for seeking the relief. Therefore, the petitioner is scrupulously failed to make out any case to invalidate the aforesaid Rule 26(i). Hence, the writ petition is liable to be dismissed.

9. Upon the conspicuous submissions made on either side in detail and on perusal of the material on record vis-à-vis the facts and circumstances, the point which arises for consideration in this writ petition is as to whether Rule 26(i) of the A.P. Revised Pension Rules, 1980 is unconstitutional or invalid and is liable to be quashed.

10. Falling back on the facts of the case, there is no dispute as mentioned in the preceding paras in regard to the service

particulars of the petitioner. Though, he was initially appointed as attender, but subsequent to his acquisition of post-graduate degree qualification, he was appointed as Junior Lecturer in Civics on 22.07.1974 and the petitioner has been working in S.V. Junior College, Tirupathi under the control and management of the Tirumala Tirupathi Devasthanam.

11. According to the petitioner, having regard to the situation existing on the incompatible student community where he became a victim, he had to go on leave repeatedly as mentioned and ultimately tendered his resignation on 24.01.1990, which was duly accepted. It is not the case of the petitioner that before any such acceptance the petitioner has made any attempt to withdraw the said resignation by any means. It is only on a subsequent intimation about his not entitlement as to the pensionary benefits, the petitioner sought for converting the same into a voluntary retirement from that of his resignation and seeking the withdrawal of the resignation later as well. However, this letter was filed as early as on 03.12.1990 followed by another one dated 06.12.1990 whereas the earlier resignation letter, which was accepted, was on 24.01.1990. To this, the petitioner received an intimation through memo, dated 04.05.1991 rejecting his request. This was followed by further correspondence and ultimately the impugned proceedings stating that he would not be entitled to any such benefits, having regard to the specific provisions under Rule 26(i) of the said rules. Therefore, the petitioner apart from questioning the action of the denial of the pensionary benefits, he seeks to assail the very validity of the Rule 26(i) of the aforesaid Rules on the ground that the same is unconstitutional, arbitrary, illegal and opposed to principles of natural justice. After narrating the sequel of events, no specific reasons or a ground or any point is alleged

as to how the said rule according to him is unconstitutional or invalid.

12. Before proceeding further, it could be opt to refer to the very rule itself, which reads as follows:

> *"26. Forfeiture of service on resignation –*
> *(1) Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service.*
> *(2) A resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies."*

13. On a bare reading of the aforesaid rules, it takes into situation under Sub-rule (i) wherein it is contemplated that unless and until the appointing authority allows or permitted to be withdrawn any such resignation in the public interest, it would entail the forfeiture of past service. Therefore, it is always open for an employee to tender any resignation to seek such withdrawal. However, necessarily it follows before its acceptance by the appointing authority. The second limb of the aforesaid rule is it takes any situation whether the employee having submits a resignation, ventures to accept another appointment whether permanent or temporary under the Government and that to be with due permission, any such resignation would not come in the way of treating the past service for all such purposes.

14. As far as the facts of this case are concerned; situation does not fall within the limits of Sub-rule (2). Therefore, we have to fall back on the Sub-rule (1) which has stated above specifically

contemplates the forfeiture of the past service unless and until the resignation is permitted to be withdrawn by the appointing authority and in the public interest.

15. Admittedly in this case there was no such withdrawal or permission or any public interest is being shown to exist. The resignation was quite some time back and it is only when he came to know about the loss of benefits, he came out with an application on 06.12.1990 to withdraw the resignation letter dated 24.01.1990 which was not exceeding to by the respondents.

16. Though, on behalf of the petitioner it was sought to be contended that for no fault of him, the resignation is being put against for such denial without any valid reason or justification either in law or facts of the case.

17. In **UNION OF INDIA v BRAJ NANDAN SINGH**[1] considering the very same rule the Supreme Court held as follows:

> *Rule 26 as the heading itself shows relates to forfeiture of service on resignation. In clear terms it provides that resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. The language is couched in mandatory terms. However, sub-rule (2) is in the nature of an exception. It provides that resignation shall not entail forfeiture of past service if it has been submitted to take up, with proper permission, another appointment, whether temporary or permanent, under the Government where service qualifies. Admittedly this is not the case in the present appeal. Rule 5 on which great emphasis was laid down by the learned counsel for the respondent deals with regulation of claims to pension or family pension. Qualifying service is dealt with in Chapter III. The conditions subject to which service qualifies are provided in Rue 14. Chapter V deals with classes of pensions and conditions governing their*

grant. The effect of Rule 26 sub-rules (1) and (2) cannot be lost sight of while deciding the question of entitlement to pension. The High court was not justified in its conclusion that the rule was being torn out of context. After the past service is forfeited the same has to be excluded from the period of qualifying service. The language of Rule 26 sub-rules (1) and (2) is very clear and unambiguous. It is trite law that all the provisions of a statue have to be read together and no particular provision should be treated as superfluous. That being the position after the acceptance of resignation, in terms of Rule 26 sub-rule (1) the past service stands forfeited. That being so, it has to be held that for the purpose of deciding question of entitlement to pension the respondent did not have the qualifying period of service. There is no substance in the plea of the learned counsel for the respondent that Rule 26 sub-rules (1) and (2) has limited operation and does not wipe out entitlement to pension as quantified in Rule 49. The said rule deals with amount of pension and not with entitlement.

It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent."

18. As regards the distinction between resignation and retirement, the Supreme Court in **UCO BANK v SANWAR MAL**[2] held as follows:

"We find merit in these appeals. The words "resignation" and "retirement" carry different meanings in common parlance. An employee can resign at any point of time, even on the second day of his appointment but in the case of retirement he retires only after attaining the age of superannuation or in the case of voluntary retirement on completion of qualifying service. The effect of resignation and retirement to the extent that there is severance of employment (sic is the same) but in service jurisprudence both the expressions are understood differently. Under the Regulations, the expressions "resignation" and "retirement" have been employed for

different purpose and carry different meanings. The Pension Scheme herein is based on actuarial calculation; it is a self-financing scheme, which does not depend upon budgetary support and consequently it constitutes a complete code by itself. The Scheme essentially covers retirees as the credit balance to their provident fund account is larger as compared to employees who resigned from service. Moreover, resignation brings about complete cessation of master-and-servant relationship whereas voluntary retirement maintains the relationship for the purposes of grant of retiral benefits, in view of the past service. Similarly, acceptance of resignation is dependent upon discretion of the employer whereas retirement is completion of service in terms of regulations/rules framed by the Bank. Resignation can be tendered irrespective of the length of service whereas in the case of voluntary retirement, the employee has to complete qualifying service for retiral benefits. Further, there are different yardsticks and criteria for submitting resignation vis-à-vis voluntary retirement and acceptance thereof. Since the Pension Regulations disqualify an employee, who has resigned, from claiming pension, the respondent cannot claim membership of the fund. In our view, Regulation 22 provides for disqualification of employees who have resigned from service and for those who have been dismissed or removed from service. Hence, we do not find any merit in the arguments advanced on behalf of the respondent that Regulation 22 makes an arbitrary and unreasonable classification repugnant to Article 14 of the Constitution by keeping out such class of employees. The view we have taken is supported by the judgment of this Court in the case of Reserve Bank of India V Cecil Dennis Solomon. Before concluding we may state that Regulation 22 is not in the nature of penalty as alleged. It only disentitles an employee who has resigned from service from becoming a member of the fund. Such employees have received their retiral benefits earlier. The Pension scheme, as stated above, only provides for a second retiral benefit. Hence there is no question of penalty being imposed on such employees as alleged. The Pension Scheme only provides for an avenue for investment to retirees. They

are provided avenue to put in their savings and as a term or condition which is more in the nature of an eligibility criterion, the Scheme disentitles such category of employees as are out of it."

19. Even in regard to the situations governing superannuation, voluntary retirement, compulsory retirement and resignation which is as given up for consideration in **RESERVE BANK OF INDIA v. CECIL DENNIS SOLOMON**[3] it was held that:

" In service jurisprudence, the expressions "superannuation", "voluntary retirement", "compulsory retirement" and "resignation" convey different connotations. Voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service. Though both involve voluntary acts, they operate differently. One of the basis distinctions is that in case of resignation it can be tendered at any time, but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. Other fundamental distinction is that in case of the former, normally retiral benefits are denied but in case of the latter, the same is not denied. In case of the former, permission or notice is not mandated, while in case of the latter, permission of the employer concerned is a requisite condition. Though resignation is a bilateral concept, and be comes effective on acceptance by the competent authority, yet the general rule can be displaced by express provisions to the contrary."

20. From the aforesaid principles as laid down by the Apex Court and especially in view of the reasons as pointed out on behalf of the 4th respondent i.e. Government of Andhra Pradesh in support of the validity of the rule, it only follows that a resignation from any service is only a voluntary and unilateral act of the employee with open eyes. It can safely be stated that such an act as voluntary relinquishment of right to a post. As regards to voluntary

retirement is concerned, the rules contemplates completion of certain period of service and giving up three months notice to Government so as to make the Government alternative arrangement of such employee. Whereas as per the act of resignation to a post, the law does not contemplate any prior notice to the Government and necessarily it follows that the Government is put to hardship till the post is filled. Therefore, the objective behind the forfeiture of past service for such a voluntary action by an employee as provided under Rule 4 is only hardship to the Government by not considering his past service for the purpose of paying the benefits. Therefore, such a forfeiture of past service is fully justified in such a given issue and it cannot certainly be stated that such consequence is without any reasons. Therefore, in the circumstances as long as one can safely applies a particular provision in a given situation with a well neigh reason, it cannot be said that such a rule is wholly baseless or unreasonable. One need not search for the reasons in support of a rule as long as a presumption goes in support of its validity and more so the very act of an employee yields to such a vacuum disturbing the regularity in functioning of an office or post, the employee cannot seek any benefit by his own act of voluntary resignation. Under services jurisprudence every employee will be sufficiently protected as long as well within the limits as contemplated under the rules, but not by living in large and jeopardizing the very functioning of the employer. In such a situation, the employee cannot have the benefit in both the words and necessarily he would be taking risk of losing benefits of such past services and the other consequential benefits.

21. Therefore, we are of the view that the forfeiture of a past

service or any denial of benefits in case of a resignation as contemplated under the aforesaid rule is quite reasonable and justified, therefore, it cannot be said that the said rule suffers from any unconstitutionality or illegality much less vice to Article 14 of the Constitution of India. Therefore, we hold that the aforesaid Rule 26(i) of the aforesaid Rule is valid. Thus, we do not find any merits in the writ petition.

22. The writ petition is accordingly dismissed. However in the circumstances, no costs.

_____

B.PRAKASH RAO,J

_____

RAMESH RANGANATHAN,J

Dated: -09-2006
Note: L.R copy to be marked
B/o kvrm

---

[1] (2005)8 SCC 328
[2] (2004) 4 SCC 412
[3] (2004) 9 SCC 461